

REMARKS

INTRODUCTION

Claims 1-18 and 21 were previously and are currently pending and under consideration.

Claims 1-18 and 21 are rejected.

Claims 1, 9, 10, 18 and 21 are amended herein.

No new matter is being presented, and approval and entry are respectfully requested.

REQUEST FOR CLARIFICATION OF REJECTION

Applicant respectfully requests clarification of the outstanding rejections.

The rejection is contradictory in that it states that Himmelstein does not teach chain orders (see Action page 4, last line), and yet it cites Himmelstein as allegedly teaching all of the features of a chain order. To be specific, at page 4 the rejection states that Himmelstein teaches

- a) an order requesting, on condition of execution of an order for a first type of goods, purchase of a second type of goods, where the first and second goods are different fungible types of goods (lines 3-11);
- b) detecting execution of an order for purchase/sale of the first type of fungible goods with respect to which the order has been placed (lines 11-13) and
- c) responsive to detecting execution of that order, automatically executing the order for the second type of goods (lines 16-18).

The rejection states that Himmelstein lacks a chain order and yet all of features of a chain order are proposed as present in Himmelstein. Applicant cannot determine whether to address the Himmelstein reference or the Fraser reference in regard to the actual features of a chain order. Applicant respectfully requests clarification of for what Fraser is being cited. For purposes of this response, Applicant assumes that Fraser is being cited only for the phrase "contingent order" in the context of an electronic market, and nothing else. The Examiner appears to suggest that "contingent order" is analogous to "chain order".

REJECTIONS UNDER 35 USC § 103

In the Office Action, at pages 3-6, claims 1-3, 5, 7-12, 14, 16-18, and 21 were rejected under 35 U.S.C. § 103 as being unpatentable over Himmelstein in view of Fraser. This rejection is traversed and reconsideration is requested.

In the Office Action, at pages 6-7, claims 4, 6, 13 and 15 were rejected under 35 U.S.C. § 103 as being unpatentable over Himmelstein and Fraser as applied to claims 1, 3, 10 and 12 above, in view of Nymeyer. This rejection is traversed and reconsideration is requested.

Request For Answer to Prior Arguments

Applicant offers the following overview of the prosecution of the present application to this date. In an Amendment filed November 23, 2003, Applicant explained how the claimed chain orders are not taught or suggested by the prior art. Applicant presented detailed explanation of how claimed features of a chain order are not found in Himmelstein.

In response to Applicant's detailed comments regarding Himmelstein, the Examiner cited only one new reference, Fraser. Fraser was cited only for the teaching of a "contingent order". Fraser was not cited for any of the features that Applicant explained were not found in Himmelstein. For instance, Applicant had argued that Himmelstein does not automatically execute an order for second goods (chain order) when an order for first goods is executed. The Examiner did not answer this argument and others. The Examiner stated that Applicant's arguments were mooted by the addition of Fraser. However, there was no explanation of how Fraser might teach the various features of a chain order that were discussed in Applicant's arguments. In fact, Fraser was cited for the bare disclosure of "contingent order". Fraser does not explain or discuss what a "contingent order" is or how it is used. Based on the meaning of "contingent", a contingent order is "dependent on or conditioned by something else" (see Merriam Webster Online Dictionary). Nothing in Fraser explains what the contingent order is contingent upon.

In sum, the Examiner's the addition of Fraser does not answer Applicant's arguments; Himmelstein is still cited for teaching every word in the claims with the exception of "chain order". Applicant's unanswered arguments are still relevant with respect to Himmelstein. MPEP §707.07(f) states that although an "[a]pplicant's arguments with respect to [claims] have been

considered ... moot in view of the new ground(s) of rejection ... "[t]he examiner must, however, address any arguments presented by the applicant which are still relevant to any references being applied." Applicant's prior arguments regarding Himmelstein are still relevant and have not been addressed. Applicant's arguments of November 23, 2003 are incorporated herein by reference. Applicant requests an answer to the arguments presented in the November 23, 2003 Amendment.

Clarification of Chain Order

An Interview was conducted with the Examiner at which the information below was discussed.

The claims are amended herein to clarify that a chain order (chain purchase order) and a sell order upon which it is conditioned are each matched to respective opposite (or crossing) orders of the respective types of goods. In claim 1, for example, the inputted chain order is an order to purchase a second type of goods on condition of execution of a sell order for a first type of goods. There is detection of a first execution, which is execution of the sell order for the first type of goods by matching the sell order to a *purchase order for the first type of goods*. Responsive to this detection, there is a second execution, which is execution of the chain purchase order (purchasing goods of the second type) by matching the chain purchase order to a sell order, which is *an order to sell goods of the second type*.

As acknowledged by the Examiner, "Himmelstein, explicitly, does not disclose chain order." Himmelstein discusses a barter system in which a first barterer decides upon a first type of item to bartered and a second type of item to be acquired. The barterer submits the items to a barter database. The barter database responds with a list of the best first type of items being acquired by other barterers and a list of the best second type of items being offered for barter by the other barterers. The first barterer picks from the two lists and a barter is engaged. There is no chain order taught or discussed in Himmelstein.

Fraser mention contingent orders (see col. 4, lines 45-50) but does not explain what is meant by a contingent order. Fraser also does not discuss the chain order of the present invention.

Nymeyer adds nothing to Himmelstein and Fraser with respect to the chain order feature of the present invention

The prior art references, alone and in combination, fail to disclose or suggest a chain purchase order and all of the claim features which define the same.

REJECTIONS UNDER 35 USC § 112, FIRST PARAGRAPH

In the Office Action, at pages 2-3, claims 1-18 and 21 were rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth therein.

The Examiner appears to be requiring that the exact words of the claims be found in the specification ("For example, see claim 1 'second party', 'third party', 'first type of fungible goods', and 'second type of fungible goods' cannot be found in the specification").

Regarding all of the features mentioned by the Examiner, Applicant respectfully notes that according to MPEP § 2164.08: "not everything necessary to practice the invention need be disclosed. In fact, what is well-known is best omitted. ... the scope of enablement must only bear a 'reasonable correlation' to the scope of the claims." Furthermore, according to MPEP § 2163.02: "The subject matter of the claim need not be described literally (i.e., using the same terms or in haec verba) in order for the disclosure to satisfy the description requirement."

The Examiner's requirement that terms in the claims be identically found in the specification is contrary to the guidance of the MPEP. Withdrawal of the rejection is respectfully requested.

Nonetheless, following is a discussion of some areas of support in the specification.

Regarding "second and third party", see at least page 10, line 9; "customer A". See also page 12, line 12; "customer B".

Regarding "first and second type of fungible goods", the term "fungible" is commonly used to indicate "being of such a nature that one part or quantity may be replaced by another equal part or quantity in the satisfaction of an obligation <oil, wheat, and lumber are fungible commodities> 2 : INTERCHANGEABLE" (Merriam Webster Online Dictionary). Page 3, lines 24-26 discusses a two types of fungible good; "200" type bonds, and "183" type bonds (second fungible item). See also page 10 discussing two different types of bonds. Furthermore, Figure

22 and page 1, lines 19-23 disclose a system for transactions in bonds, where it is very well known in the art that different types of bonds are different types of fungible goods. The idea of placing a buy order in a market is that the actual good to be bought is not known. For example if bonds have a serial number, the buy order need not indicate which serial number the to-be-purchased bonds should have, rather the order directs purchase of any particular bonds that are of the right type, such as type "183" or type "200". This is a well-known aspect of trading bonds, which is discussed in the specification. Finally, Applicant notes that the specification discusses different types of bonds are posted on electronic boards and buy and sell orders are matched, where the going rate for a type of bond can fluctuate. This is typical of an electronic bond market where traders openly trade in bonds of different types.

Withdrawal of the rejection is respectfully requested.

DEPENDENT CLAIMS

The dependent claims are deemed patentable due at least to their dependence from allowable independent claims. These claims are also patentable due to their recitation of independently distinguishing features. For example, claim 4 emphasizes that the chain order is not displayed when placed but displayed when executed. The prior art of record does not teach or suggest this. Withdrawal of the rejection of the dependent claims is respectfully requested.

CONCLUSION

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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